

**Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the right to food; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the human rights to safe drinking water and sanitation**

Ref.: AL OTH 94/2023  
(Please use this reference in your reply)

31 July 2023

Dear Mr. Calderón,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the right to food; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 53/3, 46/7, 49/13, 52/4 and 51/19.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 56 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention, as Chief Executive Officer and Executive Director of AngloGold Ashanti, information we have received concerning the intended realization of a large-scale mining project (La Colosa) in Cajamarca (Tolima, Colombia), a municipality with a long-standing agricultural tradition and surrounded by a crucial ecosystem in the region.

The realization of this megaproject in Cajamarca would contravene the ban on mining activities in moorland ecosystems enshrined in the Páramos Law (1930/2018), and pose a serious threat to the realization of fundamental human rights such as the rights to food, water, and the right to a healthy environment, with serious

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repercussions for the livelihood and food sovereignty of the local and neighboring populations. It would further fail to acknowledge the rural communities' right to meaningful and equal participation, seriously affecting their livelihood and disregarding their cultural identity.

Particular concerns regarding the intimidation of various human rights defenders opposing the project have been raised by the UN independent human rights experts in communication letters addressed to AngloGold Ashanti Colombia, AngloGold Ashanti South Africa and the Government of South Africa – in November 2021 (OTH 254/2021; OTH 253/2021, ZAF 5/2021). We acknowledge the responses provided to these communications and welcome AngloGold Ashanti's cooperation with Special Procedures mandate holders.

According to the information received:

### *Background*

Cajamarca is a municipality situated in the Tolima department, covering an area of 500 km<sup>2</sup> and inhabited by around 20,000 people, with 99.8% of its population residing in rural areas. Agriculture and livestock activities account for approximately 23.3% and 29.8% of land use, respectively. Cajamarca has earned the name of the "agricultural pantry" due to its longstanding tradition of agricultural production, occupation of its residents and their cultural identity. The municipality of Cajamarca is part of the Chili-Barragán and Los Nevados páramos (high moors) ecosystems, as well as the Central Forest Reserve (CFR). These páramos play a crucial role in the natural environment, serving as a vital water source for various cities and contributing to the cultural identity of the region. Despite its advantageous location and protected status, the region faces water scarcity issues due to droughts, which have been further exacerbated by the impacts of climate change.

The people living in this region are primarily peasants, small scale and family farmers, who identify themselves based on their livelihoods, culture, and politics. They rely on agricultural activities to meet the basic food needs of themselves and their families. However, they also resort to working in the local agroindustry for a living.

Cajamarca municipality is located on the foothills of the central mountain range, creating a unique environment with varying temperatures between 1,500 and 3,800 meters above sea level. This geographical diversity allows Cajamarca to cultivate a wide range of crops, including red beans, tomatoes, potatoes, arracacha, avocados, gulupa, and coffee. The agricultural output of Cajamarca not only meets the food demands of its local population but also supplies the larger domestic markets in cities such as Ibagué, Bogotá, Cali, and Armenia. The water sources in Cajamarca play a crucial role in supporting food production in downstream municipalities as well.

La Colosa is a project of AngloGold Ashanti (AGA), a company headquartered in South Africa. The South African Government is one of the largest single investors through its Public Investors Corporation. La Colosa is planned as an open-pit mine centered in Cajamarca that would produce an

estimated 30 tons of gold per year.<sup>1</sup> This would be the company's highest-producing project and among the 10 largest precious metals mines in the world. The infrastructure required for the project includes the open pit mine, a tailings dam for chemical waste, water treatment plants, a connection to the national electric system, and a pipeline for the transport and processing of the gold. The project is in its exploratory phase.

In 2008 the company AngloGold Ashanti Colombia made its first request to the Ministry of the Environment of Colombia for permission to extract from the Central Forest Reserve. By 2009 AngloGold Ashanti Colombia had concluded 19 contracts with the Colombian Government for mining concessions in Cajamarca, amounting to a territory of 30,440 hectares where 69% of the entire municipality lived and cultivated land.

While there have been exploratory studies for decades, there is no history of large-scale mining in the region. In 2001, the Colombian Mining Code<sup>2</sup> declared all mining projects – in every manifestation and phase – to be in the “public utility and social interest”.<sup>3</sup>

In 2011, the Comptroller General of Colombia issued a formal warning regarding the negative effects of AngloGold Ashanti Colombia's water concessions in Cajamarca. These concessions posed a threat of worsening the existing droughts in the region. In response to this warning, the Corporación Autónoma Regional del Tolima (CORTOLIMA), the environmental authority of the department, declared that the groundwater in the Coello riverbed, which was the primary water source for the La Colosa project, was depleted.<sup>4</sup> Drawing on the assessments of water scarcity, the departmental administrative tribunal of Tolima ordered a precautionary measure, which led to a court order instructing the National Mining Agency to suspend two of AngloGold Ashanti Colombia's mining titles in 2013.<sup>5</sup>

In 2013, the Colombian Government categorized La Colosa as a “Project of National and Strategic Interest.”<sup>6</sup> This designation implies that additional measures aimed at procedural fast-tracking and legal security are put in place to facilitate the smooth and timely implementation of the project. This may entitle the company to execute private and/or administrative evictions, unilaterally establish compensation amounts; and allow judges to issue summary judgments in expropriation disputes.<sup>7</sup> This priority designation has allegedly left little or no opportunity for affected communities to defend their rights.

The mining project has generated substantial resistance from the local community, as they firmly believe that it would severely disrupt the

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<sup>1</sup> Unidad de Planeación Minero-Energética, *Plan Nacional De Desarrollo Minero Con Horizonte A 2025. Minería responsable con el territorio*, December 2017.

<sup>2</sup> The Mining Code (Law 685/2001) regulates the conclusion of mining contracts in the country.

<sup>3</sup> Law 685/2001, art. 13.

<sup>4</sup> CORTOLIMA, Resolution No. 1765 “Por la cual se declara el agotamiento del Recurso Hídrico Superficial de la Cuenca del Río Coello”, April 20, 2011.

<sup>5</sup> Tribunal Administrativo del Tolima, Collective Action, File No. 2011-00611-00, May 20 2016; and CG3-145 and GLN-095, No. VSC 0958 of Nov. 8, 2013; No. 000796, Aug. 28, 2013.

<sup>6</sup> CONPES 3762 del 2013 “Lineamientos de política para el desarrollo de Proyectos de Interés Nacional y Estratégicos –PINES”.

<sup>7</sup> Law 388 of 97, art. 58-71.

municipality's traditional agricultural practices and the fundamental way of life that sustains their livelihoods over the years.

In 2013, the municipality of Piedras (Tolima), where the tailings dam of La Colosa were planned to be built, held the first *consulta popular* referendum related to their approval of the mining activities in their municipal territory. The overwhelming majority of the citizens of Piedras (98.8%) voted *against it*.<sup>8</sup>

In 2015, the Colombian Congress passed Law 1753/2015, which prohibited the exploration and extraction of non-renewable natural resources in *paramo* zones. The la Colosa project is therefore in contradiction with national administrative and legislative efforts to delimit the páramo ecosystems. The intended efforts to protect the páramos were delayed by the authorities. By the time the relevant resolutions protecting the páramos were issued in 2016 by the Ministry of the Environment and Sustainable Development, the company had already secured mining concession contracts within the zone in question.

On 26 March 2017, the municipality of Cajamarca held a *consulta popular over the realization of the La Colosa project*. 6,296 people cast ballots (out of a total of 16,314 registered voters), and 98% (6,165) voted against the mining project. Consequently, the Cajamarca Municipal Council adopted the results and issued Municipal Agreement 003 of 27 April, 2017, banning mining activities in the municipality. In the same year, AngloGold Ashanti Colombia communicated that it was “forced to make the unfortunate decision to stop all activities related to the project, and with them the related employment and investment, while it waits for certainty related to mining activity in the country and in Tolima.”<sup>9</sup>

In 2018, the Constitutional Court stated that a *consulta popular* initiated by a local government could not unilaterally intervene in decisions regarding the extraction of subsoil resources in municipalities. This was a shift from a 2016 decision of the Constitutional Court which had ruled that a properly conducted local *consulta popular* could be used to challenge mining concession contracts approved by the national government. AngloGold Ashanti Colombia has since relied on the 2018 Constitutional Court ruling and subsequent rulings to try to nullify the Municipal Agreement adopting the Cajamarca *consulta popular* results.<sup>10</sup>

On the basis of the *consulta popular* results, the Cajamarca social movements petitioned the National Mining Agency to declare void all mining concession contracts in the municipality of Cajamarca. The National Mining Agency denied this request on two grounds. Firstly, the company had “vested rights” (*derechos adquiridos*), and the Agency could not unilaterally void mining titles.

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<sup>8</sup> <https://www.registraduria.gov.co/En-consulta-popular-celebrada-hoy,10769.html>.

<sup>9</sup> <https://www.anglogoldashanticolombia.com/portfolio/la-colosa/>; see also AngloGold Ashanti Official Press Release, April 2017: <https://www.anglogoldashanticolombia.com/comunicado-oficial-la-colosa/1719/>.

<sup>10</sup> Including SU-085/2015, C-053/19, and T-342.

According to art. 58 of the Colombian Constitution, “private property and the other rights acquired in accordance with civil laws are guaranteed and may neither be disregarded nor infringed by subsequent laws.” The same article establishes that “(w)hen in the application of a law enacted for reasons of public utility or social interest a conflict between the rights of individuals and the interests recognized by the law arises, the private interest shall yield to the public or social interest. Property has a social dimension that implies obligations. As such, an ecological dimension is inherent to it.” Secondly, the National Mining Agency argues that municipal *consulta popular* results are only binding on municipal authorities and do not have any effect on national institutions. According to the decree 4134 of 2011, the National Mining Agency has the general duty to “fully manage the mineral resources owned by the State and to promote the optimal and sustainable use of mining resources in accordance with the applicable regulations.” This decree does not explicitly include a rule that allows the prohibition of mining activities based on a municipal agreement, such as the *consulta popular*.

Following the *consulta popular*, the company initiated a process to cancel 10 of the 19 mining titles which it had and consolidate others. Several of the mining titles have since been suspended by judicial order. Three of the original 19 titles are still in place, which cover 14.529,06 hectares or 28% of the total land of Cajamarca. The communities living within the territories at the heart of the contracts were not consulted at any stage of the issuance of or adjustments to these titles.

In 2019, CORTOLIMA revoked AngloGold Ashanti Colombia's two water concessions for the project. CORTOLIMA declared that it would not grant any authorizations for the use of natural resources related to mining activities in Cajamarca. All previous authorizations issued before the *consulta popular* had to be reviewed and revoked if necessary. Additionally, CORTOLIMA required that all pending requests be examined to ensure compliance with the results of the *consulta popular*.

In the same year, a civil society organization, representing the entity that organized the *consulta popular*, the Corporación Cajamarca Despensa Hídrica y Agrícola, filed a "contractual controversy" with the district administrative tribunal (Cundinamarca). The aim was to invalidate AngloGold Ashanti Colombia's three remaining mining concession titles. The main argument in this lawsuit centered around the impossibility of fulfilling the contractual purpose of the mining titles, which is mineral extraction. The Cundinamarca Tribunal dismissed the contractual case in a summary judgment (*sentencia anticipada*) asserting that the statute of limitations required the case to have been filed by 2015, despite the fact that the object of the contract was contested only in 2017 by the *consulta popular*.

In July 2020, AngloGold Ashanti Colombia filed a lawsuit against CORTOLIMA's resolutions that canceled their two water concessions for the La Colosa project. The company argued that the resolutions were no longer valid since their legal basis was nullified by the Constitutional Court's ruling in 2018. They claimed that the concessions should be reinstated to continue with the exploration.

In September 2020, the Consejo de Estado of Colombia reviewed two of AngloGold Ashanti Colombia's suspended mining titles based on water scarcity concerns and confirmed the ongoing environmental threat to water sources. It ordered the continued suspension of all mining activities related to the contracts until AngloGold Ashanti Colombia was able to demonstrate to CORTOLIMA and the National Mining Agency that they would implement an alternative plan that does not endanger the Coello River and its tributaries.

Despite the results of the popular vote of 2017, AngloGold Ashanti Colombia and the Colombian Government have allegedly not demonstrated any willingness to halt the project, notwithstanding community opposition, the documented environmental limitations, and legal and procedural constraints. Moreover, evidence suggests that drilling and other activities carried out during the exploration phase of the mining project have provoked water pollution, deforestation, and threats over endemic species' habitats and ecologic areas of national relevance such as the Andean moorlands.

### *Civil society and grassroots opposition to the project*

Since 2007, when the public became aware of AngloGold Ashanti Colombia's presence and plans in the area, civil and grassroots opposition to the project has been steadily growing. This opposition not only reflects human rights and environmental related concerns specific to the project, but also to the extractive development model as a whole. The Environmental and Peasant Committee of Cajamarca and Anaime (Comité Ambiental y Campesino de Cajamarca y Anaime), is a coalition of grassroots organizations, which has mobilized dissent to the mining project in a variety of ways, including by promoting the *consulta popular*.

The individuals and organizations that advocated for the *consulta popular* in Cajamarca have allegedly been subject to defamatory statements and intimidating actions by employees of AngloGold Ashanti Colombia. Some have received anonymous death threats, allegedly by paramilitary groups, serving as private security, with links to illegal mining. In 2011 and 2013 there were particularly grave incidents of community members involved in the opposition to the mine being (incorrectly) signaled as members of guerrilla groups.<sup>11</sup> Likewise, in 2019 community leaders received threats by paramilitary groups.<sup>12</sup> Consequently, many of them have been forced to leave Cajamarca due to security concerns.

On a broader scale, community leaders involved in human rights activities have allegedly faced various forms of repression, including violence, forced displacement by paramilitary groups, and the militarization of the municipality. There are allegations that these actions have been financed by the company. Despite the difficulties to prove the relationship between mining companies and armed conflict in many territories in Colombia, the volume "Colombia adentro" of the Final Report of the Colombian Truth Commission (CEV) examines the link between gold mining projects executed by

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<sup>11</sup> See El Nuevo Día, Campesinos de Anaime Amenazados por 'coincidencias' <http://www.elnuevodia.com.co/nuevodia/tolima/regional/112789-campesinos-de-anaime-amenazados-por-coincidencias>

<sup>12</sup> See Contagio Radio, Amenazan promotores de consulta popular en Cajamarca, Tolima.

transnational companies, including AngloGold Ashanti Colombia and forced displacement, confinement, and processes of de-territorialization of ethnic communities in Antioquia and the Pacific Region. According to its findings, the CEV states that illegal armed groups served as private security groups for the opening and sustaining of large-scale regional projects related to mining and energy extraction.<sup>13</sup>

Without prejudging the accuracy of the information received, we wish to express our serious concern that if the Cajamarca mining project is developed, it is likely to impact the traditional practices, the source of economic livelihood and well-being as well as the cultural identity around peasantry that Cajamarca's local communities have appropriated since the 1930s. This will have serious implications on the full enjoyment of human rights of the affected populations, such as the rights to food, water, and a safe, clean and healthy environment. In addition, the efforts to install the large-scale open pit gold mine operation in the traditionally peasant territory of Cajamarca could potentially change the economic, cultural, and social configuration of the region from one centered around agriculture to one focused on mining.

We are also concerned that the infrastructure required for the project – including the open pit mine, a tailings dam for chemical waste, water treatment plants, a connection to the national electric system, and a pipeline for the transport and processing of the gold – would aggravate the already-existing water scarcity of the Tolima department. In addition, the existing water resources of Cajamarca are indispensable for food production in downstream municipalities of the region.

The consequences of the project are particularly concerning given the rising rates of food insecurity, which affect not only Cajamarca but other parts of the country as well. In the face of this crisis, reinforcing local farming emerges as one of the most resilient solutions, making the potential impact of the mining project even more critical.

We are deeply worried that the reduced availability and adequacy of food could lead to an increase in child malnutrition and overall food insecurity; exacerbate the vulnerability of lower-income households to falling into poverty; and lead to internal displacements in the event of a hunger crisis, or if evictions were to occur to the extent permitted by law or forced displacements by armed actors.

We are equally concerned by the fact that Cajamarca residents, like Colombian society at large, were not sufficiently involved and consulted in the processes of granting mining contracts to the company and declaring the project as a priority category by the Colombian state. The rural communities' right to a meaningful consultation has been undermined, limiting the procedural guarantees for their participation in decision-making processes and ignoring their overwhelming rejection of extractive projects as expressed in the *consulta popular* of 2017. We also express our deep concern at the alleged cases of stigmatization, intimidation, and repressive measures against environmental and human rights defenders. Similarly, we are profoundly worried about the ongoing security concerns of human rights defenders that are being obliged to leave their territories out of fear of reprisals.

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<sup>13</sup> See: CEV Informe Final - Colombia adentro – Antioquia p. 181 and Pacifico p. 147.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law and standards** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information about the human rights due diligence policies and processes put in place by AngloGold Ashanti to identify, prevent, mitigate and remedy adverse human rights impacts of your company's activities in Colombia, in particular with respect to the rights to food, water, and a safe, clean and healthy environment and in line with the UN Guiding Principles on Business and Human Rights
3. Please describe the measures that AngloGold Ashanti has taken, or plans to take, to prevent the recurrence of such situations in the future.
4. Please explain what measures have been adopted to ensure that the staff of your company as well as its subsidiaries have adequate awareness, knowledge, and tools to identify and report human rights abuses, including those alleged in the present letter, throughout your operations.
5. Please kindly provide information on how AngloGold Ashanti does not impact negatively on the work of human rights defenders, in view of the recommendations provided to Businesses in the Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on the adverse impact of business activities on human rights defenders (A/HRC/47/39/Add.2).
6. Please provide information on the steps taken by AngloGold Ashanti to establish or participate, implement and/or enforce an operational-level grievance mechanism, in line with the UN Guiding Principles, in order to address the adverse human rights impacts caused or contributed to by your company's operations.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your company will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please be informed that a letter on the same matter has also been sent to the Governments of Colombia and South Africa, as well as to the company AngloGold Ashanti Colombia.

Please accept, Mr. Shakwane, the assurances of our highest consideration.

Damilola S. Olawuyi  
Chair-Rapporteur of the Working Group on the issue of human rights and  
transnational corporations and other business enterprises

David R. Boyd  
Special Rapporteur on the issue of human rights obligations relating to the enjoyment  
of a safe, clean, healthy and sustainable environment

Michael Fakhri  
Special Rapporteur on the right to food

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Pedro Arrojo-Agudo  
Special Rapporteur on the human rights to safe drinking water and sanitation

## Annex

### Reference to international human rights law

In relation to the above allegations, we would like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, are relevant to the impact of business activities on human rights. These Guiding Principles are grounded in recognition of:

- a. “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

Furthermore we would like to note that as set forth in the United Nations Guiding Principles on Business and Human Rights, all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

The principles 11 to 24 and principles 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have caused or contributed to adverse impacts. Moreover, the commentary of the principle 11 states that “business enterprises should not undermine States’ abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes”. The commentary of guiding principle 13 notes that business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties.(...) Business enterprise’s “activities” are understood to include both actions and omissions; and its “business relationships” are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services”.

The Guiding Principles have identified two main components to the business responsibility to respect human rights, which require that “business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (guiding principle 13).

Principles 17-21 lays down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when “business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”.

Furthermore, business enterprises should remedy any actual adverse impact that they cause or to which they contribute. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to guiding principle 25).